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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of the )  
Local Competition Provisions )  
in the Telecommunications )  
Act of 1996 )

CC Docket No. 96-98

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COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.

J. Christopher Dance  
Vice President, Legal Affairs  
Kerry Tassopoulos  
Director of Government Affairs  
EXCEL TELECOMMUNICATIONS, INC.  
9330 LBJ Freeway  
Suite 1220  
Dallas, Texas 75243

Thomas K. Crowe  
LAW OFFICES OF THOMAS K. CROWE,  
P.C.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 973-2890

COUNSEL FOR EXCEL  
TELECOMMUNICATIONS, INC.

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## **SUMMARY OF COMMENTS**

Although the Commission's proposals in its Notice of Proposed Rulemaking ("Notice") are of a general nature, Excel Telecommunications, Inc. ("Excel") supports the Commission's effort to expeditiously move forward with rules implementing Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act").

As Excel's Comments demonstrate, the Commission should adopt explicit national rules to implement Section 251. Explicit national rules will serve to level the playing field by diminishing incumbent LECs' vastly superior bargaining power as well as have numerous other important public interest benefits.

Excel's Comments also show that the Commission should take the initial step of moving towards a pricing regime which treats all "telecommunications carriers" alike insofar as they require interconnection with, or access to, the local network. This means that interexchange carriers originating or terminating toll traffic should not be required to pay more, in the form of access charges, for fundamentally similar or identical local network interconnection arrangements which will be made available under the 1996 Act to providers of local exchange and exchange access services. It must also mean that Bell Operating Companies which may provide interLATA services in the future should not be afforded local network interconnection arrangements which are more favorable (in terms of price or otherwise) than those of their interexchange competitors.

Another important issue addressed in the Notice is dialing parity, which includes dialing parity for intraLATA toll traffic. Excel favors presubscription (with customers choosing between the incumbent LEC and *any* interexchange carrier authorized in that state) as the most feasible

method of achieving dialing parity in intraLATA toll markets. Procedures generally comparable to the balloting procedures used to introduce equal access competition in the mid-1980's could potentially be utilized, with the LEC notifying customers of the advent of intraLATA toll dialing parity. Excel believes that dialing parity, including for intraLATA toll traffic, should be implemented as soon as possible consistent with the requirements of the 1996 Act. Prompt implementation of dialing parity in a manner which maximizes competition is in the public interest.

Excel's Comments also show that national guidelines should be established to address good faith negotiation. As the Commission's Notice recognizes that incumbent LECs will have vastly superior bargaining power in interconnection negotiations, a level playing field must be established *vis-a-vis* the negotiation process.

In the context of Section 251(c)(3), Excel favors use of an end user perception test to assess qualitative differences in service between different carriers. Moreover, Excel believes that to the extent that any restrictions are imposed on resale at all, they should be minimal. Finally, Excel generally supports the Notice's tentative conclusion to 1) identify a minimum set of network elements that incumbent LECs must unbundle for any requesting telecommunications carrier; 2) adopt a forward-looking or long run incremental cost (LRIC) methodology for pricing; and 3) require incumbent LECs to disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection.

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## COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.

## I. INTRODUCTION

Excel is one of the fastest growing providers of long distance telecommunications services in the U.S. As a reseller which commenced operations in 1989, Excel provided service to approximately 3.1 million residential and small business customers as of March 31, 1996. The Company offers a variety of long distance services and products, including residential service, commercial service, 800 service, international services and calling cards. Excel's continuing growth has resulted in an initial public offering undertaken by its parent company, Excel Communications, Inc., which is now traded on the New York Stock Exchange. As a reseller with a substantial customer base located throughout the country, Excel's operations stand to be substantially impacted by the instant proceeding.

Excel applauds and generally supports the Commission's Notice in the instant proceeding. Rules and policies adopted pursuant to this docket will establish the conditions necessary for local competition to succeed, as well as a framework for open competition to develop in all sectors of the telecommunications industry.

## **II. EXPLICIT NATIONAL RULES SHOULD BE ADOPTED**

In its Notice, the Commission seeks comment on whether it should adopt "explicit national rules" to implement Section 251 of the Telecommunications Act of 1996.<sup>1</sup> Notice at ¶¶29-31. Excel fully endorses the Commission's proposal to adopt explicit national rules to implement Section 251.

Excel supports the Commission's tentative conclusions that explicit national rules can be expected to 1) reduce entry costs by promoting uniform network configurations (id. at ¶30); 2) expedite implementation of the 1996 Act, including providing guidance to reviewing federal district courts (id. at ¶31); and 3) clarify the requirements of the 1996 Act, including important provisions in Section 271 pertaining to BOC entry into in-region interLATA markets (id. at ¶32). The benefits of a uniform, pro-competitive national policy framework are substantial and consistent with Congress' goal of promoting competition in local telecommunications markets throughout the country.

According to the Commission, "we believe that incumbent LECs have vastly superior bargaining power in negotiations for mutual termination." Id. at ¶8, n.19. The incumbent LEC's superior bargaining power is yet another important reason why explicit national rules are

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

necessary. Without such rules, incumbent LECs with bargaining power will be able to dictate the pace and terms of market opening measures, thereby frustrating Congress' intent.

Excel also supports the Commission's tentative conclusion that "Sections 251 and 252 apply to both interstate and intrastate aspects of interconnection, service and network elements ...." Notice at ¶¶37-39. Excel agrees that this is the only way to read Sections 251 and 252 as the purpose of the 1996 Act would be undermined if these provisions were only applied to interstate services. Excel believes that the Commission's jurisdictional role is parallel with that of the states since Section 252(e)(5) calls upon the Commission to assume the state commission's responsibilities if the state commission fails to carry out its Section 252 duties.<sup>2</sup>

### **III. NETWORK ACCESS FOR INTEREXCHANGE SERVICES MUST BE IMPLEMENTED IN A FAIR AND EVEN-HANDED MANNER**

The Notice seeks comment on interconnection arrangements between incumbent LECs and interexchange carriers. Notice at ¶¶159-165. As described below, Excel believes that interexchange carriers should be able to seek interconnection under Section 251(c)(2) for the purpose of originating or terminating toll traffic. Excel stresses the importance of reconciling the existing access charge system with Section 251(c), and urges the Commission to ensure that BOC interLATA services are subject to the same conditions for connection to network facilities as those of non-BOC competitors.

Excel concurs with the conclusion reached in the Notice that carriers providing

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<sup>2</sup> Excel concurs with the Commission's tentative conclusion that Congress intended Section 251 to take precedence over any inconsistent implications based on Section 2(b) of the Communications Act of 1934, as amended ("1934 Act").

interexchange services, including resellers, are "telecommunications carriers." Notice at ¶159. Thus, Excel agrees that interexchange carriers and resellers may seek interconnection and/or unbundled elements under Section 251(c)(2) and (c)(3).

Further, Excel agrees with the Commission's conclusion that carriers may request unbundled elements for purposes of originating and terminating interexchange toll traffic, in addition to whatever other services the carrier wishes to provide over those facilities. Id. at ¶163. Under this approach, resellers such as Excel could obtain network elements subject to pricing for such unbundled elements under Sections 251 and 252 without having the obligation to necessarily use those elements to compete with the incumbent LEC to provide telephone exchange services. Excel concurs that, in such cases, incumbent LECs should not be allowed to assess Part 69 access charges in addition to charges for the unbundled elements. Id. at ¶165.

However, Excel disagrees with the Commission's apparent conclusion that Section 251(c)(2) "imposes limits on the purposes for which any telecommunications carrier, including interexchange carriers, may request interconnection pursuant to that section." Id. at ¶¶160-161. By reading a limitation into the phrase "transmission and routing of telephone exchange service and exchange access," Excel believes that the Commission would be imposing a major service restriction--which would operate to hinder competition--where none was intended. To the contrary, Excel believes that any "telecommunications carrier," including resellers, should be able to seek interconnection under Section 251(c)(2) for the purpose of originating or terminating an interexchange toll call. This view is clearly supported by Section 252(i) which, without qualification, requires LECs to make interconnection available to any requesting "telecommunications carrier." Moreover, it is unlawfully discriminatory under Section 202(a) of



the 1934 Act for interexchange carriers to pay charges for local network connections which are substantially higher than the charges paid by other users of the same network services.

The Commission's Notice acknowledges that its Part 69 access charge regime and the provision of interconnection and unbundled elements pursuant to Sections 251 and 252 "have clear similarities." Notice at ¶146. Moreover, the Notice recognizes that "under a long-term competitive paradigm, it is not clear that there can be a sustainable distinction between access for the provision of local service and access for the provision of long distance service." Id. Excel concurs with these observations which have significant implications for this proceeding.

Excel does not believe that Congress intended for Section 251(c) to supersede the existing access charge system.<sup>3</sup> However, as the Commission has recognized, it is not possible to justify rates for access which are many times higher than rates for fundamentally comparable interconnection and unbundled elements. Excel believes that the 1996 Act as well as Commission policy favoring cost-based rates<sup>4</sup> mandates that the Commission modify its access charge system by bringing rates to costs. In addition, as indicated above, two systems for local network connections which assess fundamentally different rates would be unlawfully discriminatory under the 1934 Act.

Most significantly, Excel urges the Commission to ensure that BOCs entering interLATA markets pay the same for access as do their interexchange competitors. Under no circumstances should BOCs be permitted to use interconnection or unbundled elements to originate and

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<sup>3</sup> See, e.g., 1996 Act, §261(a).

<sup>4</sup> One of the fundamental objectives of the Commission's access charge proceeding was to achieve cost-based rates. See, e.g., Market Structure (Phase I), 93 FCC 2d 241, 275 (1983) ("cost-based rates provide correct signals to the marketplace....").

terminate toll traffic while interexchange competitors are required to utilize higher-priced, traditional access.

**IV. DIALING PARITY, INCLUDING FOR INTRALATA TOLL CALLING, SHOULD BE IMPLEMENTED AS SOON AS POSSIBLE AND IN A MANNER THAT MAXIMIZES COMPETITION**

Excel supports the Commission's tentative conclusion that "Section 251(b)(3) creates a duty to provide dialing parity with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services." Notice at ¶206. Excel emphasizes, and the Commission acknowledges, that such dialing parity must extend to intraLATA toll calling. Id. at ¶¶210-212.

Excel agrees that presubscription represents the most feasible method of achieving dialing parity in long distance, including intraLATA toll, markets. Id. at ¶207. While significant variation exists among the states with respect to intraLATA toll dialing implementation methodologies, Excel favors a methodology which would enable customers to choose between the incumbent LEC and *any* interexchange carrier authorized in the state. By affording all qualified carriers (i.e., those authorized in that state) the opportunity to compete for such traffic, an approach of this type promotes maximum competitiveness. By contrast, Excel believes that a methodology that limits customer choice to between the LEC and the *same* interexchange carrier the customer is currently presubscribed to for interLATA long distance calling is not sufficiently competitive. See id. at ¶210.

In addition, Excel believes that the Commission should establish procedures (such as balloting) to permit consumers to choose among competitive telecommunications providers of

intraLATA toll services. Such procedures could be modelled after the balloting procedures used to introduce equal access for interstate, interLATA services in the mid-1980s.<sup>5</sup> Pursuant to such a process, the Commission would require LECs to notify customers as to the advent of intraLATA toll dialing parity; that they would have the right to select a new carrier for such traffic; and otherwise inform consumers as to the details of the process. Such an approach would maximize competition in the intraLATA calling market.

Section 251(b)(3) of the 1996 Act imposes no specific deadline upon the LECs for implementing dialing parity; however, Section 271(e)(2)(A) applies a specific timetable to BOC implementation of intraLATA toll dialing parity. Excel believes that dialing parity, including for intraLATA toll traffic, should be implemented as soon as possible consistent with the requirements of the 1996 Act. Implementing dialing parity amounts to "leveling the playing field." The dialing of additional digits to access certain carrier services (when competing carriers can be accessed in a more convenient manner) not only disadvantages those particular carriers, but it also disadvantages their customers who are forced to dial the additional digits. For example, the Commission itself has acknowledged that the need to dial an access code to reach non-LEC services for intraLATA toll calling reduces competition and disadvantages consumers. According to the Commission,

the current system may well reduce competition for this traffic and may defeat customer expectations that all of their interstate toll traffic will be carried by their presubscribed IXC. Further, such calls are sometimes carried by a LEC at tariffed rates substantially higher than would have been charged if the call had been turned over to the customer's presubscribed interLATA IXC [footnote omitted]. Because business customers with high calling volumes may have choices other than "1+" MTS for these toll calls (e.g., least cost

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<sup>5</sup> See Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985), recon denied, 102 FCC 2d 503.

routing equipment), such higher rates may be paid disproportionately by residential ratepayers.<sup>6</sup>

For these reasons, dialing parity should be implemented as soon as practicable.

The Commission seeks comment on the Section 251(b)(3) prohibition against "unreasonable dialing delays." Notice at ¶218. Excel believes that any method utilized for measuring dialing delay be based on the dialing delay that a customer experiences when it places a call using the services of the LEC. In other words, the dialing delay encountered when using the services of a competitor such as Excel should be no greater than that experienced when using LEC services.

Finally, Excel agrees with the Commission's tentative conclusion that "nondiscriminatory access" (*vis-a-vis* telephone numbers, operator services, directory assistance and directory listing) means the same access that the LEC receives with respect to such services. Id. at ¶215.

#### **V. NATIONAL GUIDELINES SHOULD BE ESTABLISHED TO ADDRESS GOOD FAITH NEGOTIATION**

The Notice seeks comment on "the extent to which the Commission should establish national guidelines regarding good faith negotiation under section 251(c)(1) ...." Id. at ¶47. Excel believes that the Commission should adopt rules to ensure that good faith negotiation occurs.

The Notice recognizes that incumbent LECs will have vastly superior bargaining power in interconnection negotiations. Id. at ¶8, n.19. The Commission's rules, therefore, must seek

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<sup>6</sup> Administration of the North American Numbering Plan, 9 FCC Rcd 2068, 2077 (1994).

to level the playing field with respect to negotiations. Any conditions to be satisfied to initiate negotiations should be minimal, as such conditions, especially for smaller competitors, may serve as entry barriers. Moreover, a requesting telecommunications carrier should not be required to limit its legal remedies in the event that negotiations fail.

## **VI. MISCELLANEOUS ISSUES**

Excel generally supports the Commission's tentative conclusion to identify a minimum set of network elements that incumbent LECs must unbundle for any requesting telecommunications carrier. Notice at ¶77. Excel agrees that the Commission must stand ready to establish different or additional unbundling requirements as services, technology and the needs of competing carriers evolve. Id. at ¶77.

Excel also supports the Notice's conclusion that Section 252(d)(1) precludes states from setting rates by use of traditional cost-of-service regulation. Id. at ¶123. Excel endorses the Notice's proposal to utilize a forward-looking or long run incremental cost (LRIC) methodology. Id. at ¶123.

The Notice seeks comment on the term "nondiscriminatory" in the context of Section 251(c)(3). Id. at ¶91. Excel favors use of an end user perception test to assess qualitative differences in service between different carriers. Although, as the Notice points out, Section 251(c)(3) does not appear to expressly require that access to unbundled elements be afforded "at least equal in quality to that provided" by the LEC itself, such a requirement must be read into Section 251(c)(3). The non-discrimination provisions are the heart of the 1996 Act and allowing incumbent LECs to afford themselves superior access to unbundled elements would frustrate clear

Congressional intent.

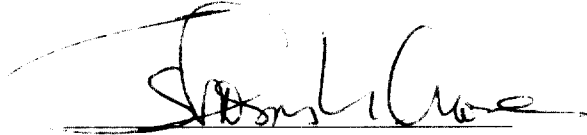
The Commission's Notice seeks comment on the resale obligations imposed on incumbent LECs by Section 251(c)(4) and other LECs by Section 251(b)(1). Excel believes that to the extent any restrictions are imposed on resale at all, they should be minimal or, in the Commission's words, "quite narrow". Excel concurs with the proposal that restrictions on resale should be presumed to be unreasonable--and thus unlawful--absent an affirmative showing that the restriction is reasonable.

Finally, Excel also supports the tentative conclusions reached in the Notice with respect to the Section 251(c)(5) duty to provide public notice of technical changes. Notice at ¶¶189-192. Excel concurs that public notice of technical changes is critical to the uniform implementation of network disclosure, particularly for entities operating networks in numerous locations across a variety of states. Id. at ¶190. Excel supports the Commission's tentative conclusion that incumbent LECs should be required to disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection. Id. Excel also supports the three proposed categories of minimum information that a potential competitor would need in order to achieve and maintain efficient interconnection. Id.

**VII. CONCLUSION**

Excel generally supports the Notice's proposals subject to the qualifications discussed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

J. Christopher Dance  
Vice President, Legal Affairs  
Kerry Tassopoulos  
Director of Government Affairs  
EXCEL TELECOMMUNICATIONS, INC.  
9330 LBJ Freeway  
Suite 1220  
Dallas, Texas 75243

Thomas K. Crowe  
LAW OFFICES OF THOMAS K. CROWE,  
P.C.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 973-2890

COUNSEL FOR EXCEL  
TELECOMMUNICATIONS, INC.

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